

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

DUSTIN BURNIKEL,

Plaintiff(s),

vs.

MICHAEL FONG, GREG WESSELS and  
CITY OF DES MOINES, IOWA,

Defendant(s).

4:15-cv-00050-JAJ-HCA

RULING ON PLAINTIFF'S MOTION FOR  
LEAVE TO REOPEN DISCOVERY

Plaintiff's motion for leave to reopen discovery [98], which defendants resist [101], is before the Court.

On October 12, 2016 Chief Judge Jarvey granted in part and denied in part defendants' motion for summary judgment and denied plaintiff's cross-motion for summary judgment. [89]. In denying parts of defendants' motion, the Court denied defendants qualified immunity as there were factual issues on the underlying constitutional claims. Defendants filed a notice of appeal on October 13, 2016 [91] and at a status conference on that day made an oral motion to stay proceedings. The Court granted the motion to stay pending receipt of further information from the Eight Circuit concerning the appeal. [95]. The circuit set a briefing schedule and all briefs have been filed. *Burnikel v. Fong*, Case No. 16-3930. Oral argument has not been set as of this time.

Plaintiff's motion for leave to reopen discovery is premature. Until the circuit has ruled on the issues raised in the interlocutory appeal, all proceedings in this Court have been stayed. Once the circuit has ruled and mandate has been issued, the Court will set a status conference. Plaintiff may renew his motion after mandate is returned from the circuit.

Plaintiff's motion to reopen discovery [98] **denied without prejudice** as premature.

IT IS SO ORDERED.

Dated this 13th day of March, 2017.



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Helen C. Adams

Chief U.S. Magistrate Judge